IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3583 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIKAS COOPERATIVE BANK LIMITED

Versus

REGISTRAR

Appearance:

MR BS PATEL for the Petitioner

Mr. S.B.Vakil, Senior Counsel for Mr. Chhatrapati, advocates for the respondents.

CORAM: HON'BLE MR. JUSTICE KUNDAN SINGH

Date of decision : 14.2.2002

CAV JUDGMENT

By means of this petition, the petitioner has sought for quashing and setting aside the order dated 2/3.5.2001

of Joint Registrar (Audit), Co-operative Societies, Gujarat State, whereby Mr. B.M.Solanki has been appointed as a liquidator of the petitioner bank under sections 107 and 108 of Gujarat Co-operative Socieites' Act. The petitioner is a co-operative bank registered under Gujarat Co-operative Societies' Act (hereinafter referred to as the "Act") on 13.5.1996 for upliftment of scheduled castes and scheduled tribes persons as per the Rules of Reserve Bank of India. (For short "RBI"). More than 51% of the share holders of the bank are required to be kept from this community only. One Lavjibhai Parmar was elected as a Director by the members of the Board of Directors and their result was declared in the annual general meeting on 20th October, 1999. After the election of the Board of Directors alongwith Lavjibhai Parmar, a meeting was held appointing Lavjibhai Parmar as the Chairman of the petitioner bank. Unfortunately, said Lavjibhai Parmar expired on 15.3.2000. In place of Lavjibhai Parmar, some other director was elected as Chairman of the petitioner bank. An inspection was carried out by the officials of the RBI on 31st March, 2000. Under the leadership of new elected Board, a majority of the grievances raised in the inspection of the respondent no.2 RBI were rectified. In comparison to the last accounting year, the petitioner bank earned profit during the present year and their was not a single complaint by any of the depositors to whom the amount was required to be paid by the petitioner bank. One Jagdishbhai Vania moved the respondent no. 2 on the basis of the inspection carried out prior to the election of the Board of Directors of the petitioner bank, the R.B.I. sent a letter dated 17.11.2000 to the respondent no.1 (Registrar, Co-operative Societies, Gujarat State). Due to incident of Madhavpura Mercantile Co.Op. Bank Ltd., the administrator who was appointed earlier was trying to take charge of the petitioner bank. The petitioner bank filed a writ petition being Special Civil Application no. 2757 of 2001. This Court passed the order dated 18.4.2001 granting ad-interim relief in favour of the petitioner and stayed the operation and implementation of the order appointing administrator of the petitioner bank, if the order has not yet been implemented. The respondent no. 2 RBI subsequent to this had cancelled the licence of the petitioner bank on 23.4.2001 and communicated the same to the petitioner by a letter/order dated 26th April, 2001. The petitioner filed an appeal against the orders dated 23.4.2001 and 26.4.2001 before the appellate authority (Joint Secretary, Ministry of Finance Department), New Delhi under section 25(5) of the Banking Regulations Act, 1949. After the order of cancelling the licence of the petitioner Bank, the RBI has directed the respondent no. 1 to appoint liquidator vide order dated 23.4.2001. This order dated 23.4.2001 has been challenged in this petition on the ground that the respondent no. 2 has no authority to give any further direction or order to the respondent no.1 for appointing a liquidator in the petitioner bank. The respondent no.1 has

passed the order dated 2/3.5.2001 appointing Mr. B.M.Solanki as liquidator of the petitioner bank. The respondent no. 1 passed an order communicating by a letter dated 11.5.2001 changing the name of the liquidator. The petitioner bank filed Civil suit no. 233 of 2001 in the District Court, Ahmedabad (Rural), Ahmedabad. The court granted ad-interim relief restraining the respondent from further operating their letter dated 23rd April, 2001 as well as the letter dated 26th April, 2001. Inspite of that, the respondent no.1 passed another order of appointment of a liquidator at the instance of the respondent no. 2. The petitioner, under misconception of law, preferred an appeal before Gujarat State Co-operative Tribunal and the Tribunal granted stay upto 6.5.2001. The petitioner bank has been then advised that the appeal is not maintainable and hence the petitioner is to withdraw the said appeal. It is also stated that the order passed by the respondents are motivated. Hence, this petition has been filed by the petitioner bank. The order at Annexure "A" was passed on the recommendation of the respondent no. 2 ignoring the fact that the respondent no. 2 has cancelled the licence by a communication dated 26.4.2001. Therefore, the responden tno.2 has no authority to recommend or request for the appointment of a liquiator in the petitioner bank. The authority could have taken a lesser drastic remedy of appointing an administrator and superseding the Board of Directors, but the authority has malafide taken more drastic remedy by imposing extreme penalty cancelling the licence of the petitioner bank. No opportunity of hearing was afforded to the petitioner. Even a copy of the direction/order passed by the respondent no.2 was not supplied to the petitioner. Once this Court had granted stay against the appointment of an administrator and when the Civil Court has already granted stay against the respondent no. 2, the authorities are arbitrarily and high-handedly took action for appointment of a liquidator in the petitioner bank. The petitioner bank is subjected to three orders passed by the respondent authorities i.e. (1) appointment of an administrator (2) cancelling of licence and (3) appointment of a liquidator which are apparently malafide and violative of Article 14 of the Constitution of India. In the cases of Mahavpura Mercantile Co-operative Bank, Ahmedabad Urban Co-operative Bank Ltd. and Mahila Nagrik Sahkari Bank Ltd., neither licences have been cancelled nor liquidators have been appointed, while the petitioner bank has not only improved its working but also there was no complaint regarding payment of any amount to any of the customers. The order of the authority by adopting pick and choose policy is violative of Articles 14 and 16 of the Constitution of India. The impugned order was passed on 2/3.5.2001, but the copy of the same was supplied to the petitioner bank on 11.5.2001 after banking hours. The respondent no. 3 came with the order and sealed the bank premises without any authority. The impugned order at Annexure "A" is passed in purported exercise of powers under sections 107 and 108 of the

Act. But those sections pre-suppose that before passing any final order of liquidation, interim order is required to be passed. The impugned order has been passed without passing any interim order, therefore, the order is against statutory provisions of the Act. Even after cancellation of the licence of the petitioner bank, it remains only a society and the provisions of section 115-A of the Act are not applicable and only the provisions of the Co-operative Societies Act would be applicable, which has been totally ignored by the authorities. The bank has alreay improved its working and is in a position to survive, but ignoring the same, an officer of lower rank than the State Registrar has passed the impugned order. The order at Annexure "A" has been passed with ulterior motive so that the appeal file by the petitioner bank under Banking Regulations Act against cancellation of the licence and against appointment of an administrator may become infructuous. The respondent authorities have no power at all to pass such orders. The impugned order was passed on the basis of inspection carried out by the respondent no. 2 RBI on 31.3.2000, while the impugned order has been passed approximately after one year and one month. Hence, there was no urgency and even in that event, there cannot be a departure from the principles of natural justice for giving and opportunity of being heard to the petitioner Bank. Hence, the impugned order is against principles of natural justice, arbitrary and violative of Article 14 of the Constitution of India.

2. The counter-affidavit-in-reply has been filed by the respondent no. 2 Reserve Bank of India wherein it is stated that the financial position as appearing from the order dated 2/3.5.2001, which is not disputed by the petitioner. This petition has been filed on technical and procedural infirmities set out in the grounds of petition. Giving personal hearing to the petitioner before passing the liquidation order is not necessary. It has been passed as per the direction of the RBI under section 115(A) of the Act. On the basis of the direction under section 115(A) of the Act, earlier an order dated 7/9.2.2001 for the appointment of an administrator was passed and that order was challenged by the petitioner by filing a writ petition being Special Civil Application No. 2757 of 2001 and that petition was lateron withdrawn vide order dated 20.6.2001. Hence, the petitioner has acquiesced in the proceedings and the petitioner is now estopped and is disentitled from challenging the said order passed under section 115(A) of the Act. The petitioner also file LPA No. 486 of 2001 against the order passed by the learned Single Judge whereby the interim relief was refused. The order of the learned Single Judge was confirmed in the LPA vide order dated 16.6.2001. The order of liquidation in question was passed under section 115 of the Act in view of the direction of RBI and that was not passed under sections 107 and 108 of the Act. Though in the order, it is stated that the order was passed under sections 107 and 108 of the Act, mere mention of

wrong sections does not render the order invalid. The learned Single Judge has accepted in the order dated 21.5.2001 that the order has been made under section 115A of the Act as per the direction given by the RBI and it is not an order under sections 107 and 108 of the Act. The LPA was withdrawn on 16.6.2001. The RBI, by virtue of section 115(A) of the Act read with section 35-A of the Banking Regulations Act is empowered to give a direction both to the Registrar and Co-operative Banks. Hence, the order of liquidation is legal and is required to be upheld. The Registrar of Co-operative Societies has merely to go by and follow the instructions of RBI under section 115(A) without itself making an independent inquiry under sections 107 and 108 of the Act and has to pass a straighaway final order of winding up and appointment of liquidator. The order dated 23.4.2001 cancelling the licence of the petitioner bank was passed by the respondent no. 2 RBI and that was communicated to the petitioner. The said order was passed after giving a show cause notice dated 25.10.2000 by RBI to the petitioner. Against the said order for cancellation of licence, the petitioner has preferred an appeal under the provisions of Banking Regulations Act, 1949 to the Central Government, Ministry of Finance Department of Economic Affairs (Banking Division), New Delhi. That appeal is still pending for decision before Central Government. As such, the present petition has become infructuous as the licence stands cancelled and the petitioner cannot carry on banking business. The order dated 2/3.5.2001 for liquidation and appointment of liquidator was made as per the direction of the respondent no. 2 RBI under section 115(A) of the Act and is not an order under sections 107 and 108 of the Act. The ratio of the decision rendered in the case of Apexa Co.Op. Bank vs. District Registrar and others reported in 1993(2) GLH, page 861 will not be applicable.

3. One affidavit-in-reply has also been filed by the respondent no. 3 Bhikhubhai V.Purabia stating therein that he was directed to initiate liquidation proceedings in respect of the petitioner bank. He went to the bank premises on 11.5.2001 at about 4.00 p.m. and found that the bank was closed. He sealed the entrance door of the bank and prepared the Rojkam in presence of one P.N.Shah who was claiming to be the Managing Director of the Bank. He was asked by Mr. P.M.Shah as to how he had the authority to seal thebank's premises. He explained about the orders passed by the respondent authority. Police was also called. He informed the police personnel about the orders of liquidation and appointment of liquiator. He was then taken to the police station where he reported the matter on 11.5.2000. On the next day, he went again to the bank premises at about 11.00 a.m., but at that time, noboy was present and he again affixed another seal on the entrance door of the bank premises and again prepared a Rojkam. On 14.5.2001, he received a summons under section 110-M of the Act calling upon the bank's Chairman,

Managing Director and Manager to remain present at thebank premises on 21.5.2001. He went to the bank premises on 15.5.2001 at 11.30 a.m. just to check up whether the seal was intact or not, but he found the seal broken and the bank was open. He found four persons inside the bank, three of whom were staff members of the bank and the fourth was the brother of Managing Director. When he asked the staff persons as to how they had entered the bank premises after breaking the seal, Mr. P.M.Shah told him that they had obtained stay order from the Co-operative Tribunal. According to him, the Co-operative Tribunal had no jurisdiction to entertain an appeal against the order of liquidation passed under section 107 of the Act. He therefore, lodged a complaint with Vejalpur police station and he also informed the Registrar at Gandhinagar on telephone about his experience at the police station. The Registrar, thereupon directed him to meet the Deputy Commissioner of police. On the next day i.e. on 16.5.2001 at about 12.30 p.m., he met the Deputy Commissioner of Police in that connection and he in turn, directed him to go to the police station. He again went to the police station and gave a written complaint to the police station for registration of a criminal case. On 19.5.2001, the Police Inspector called him to Juhapura police chowky and asked him to accompany him to the bank premises and he accordingly went there, but no panchnama was made on that day as the Bank's manager was not present. He required the police protection for the purpose of sealing the bank premises. Once again he found the earlier seal tampered with and he went to the bank premises and affixed his seal to the entrance of the bank premises in presence of the police personnel and prepared a Rojkam of the same on the spot.

4. The petitioner has also filed affidavit-in-rejoinder.

5. Heard the learned advocates for the parties and perused the relevant papers on record.

6. The contention of the learned counsel for the petitioner is that where licence of a co-operative bank is refused
or cancelled under section 22 of the Banking Regulations Act, the provisions of section 11 of the Banking Regulation Act (requirements as to minimum paid up capital and reserves) will not be applicable as per the amending Act (Z-A). Section 36-A of Banking Regulation Act reads as under:

36A. Certain provisions of the Act not to apply to certain banking companies : (1) The provisions of section 11, sub-section (1) of section 12, and sections 17, 18, 24 and 25 shall not apply to a banking company-

(a) which, whether before or after the commencement

of the Banking Companies (Amendment) Act, 1959 has been refused a licence under section 22, or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or

(b) whose licence has been cancelled under section 22, whether before or after the commencement of the Banking Companies (Amenment) Act 1959.

(2) Whether the Reserve Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provisions for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act and thereupon all the provisions of this Act, applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be one before such notice.).

(za) in section 36A-

(i) for sub-section (1), the following sub-section shall be substitute, namely:-

"(1) The provisions of section 11, section 18 and section 24 shall not apply to a co-operative bank which has been refused a licence under section 22 or whose licence has been cancelled under that section or which is or has been prohibited or precluded from accepting deposits by virtue of any order made under this Act or of any alteration made in its bye-laws".

And under sub-section introduced by the amendment, a co-operative bank will continue as a primary co-operative bank subject to the terms and conditions imposed by the Reserve bank of India.

Sub-section (iii) inserted by Amendment Act reads as under:

"(3) Subject to the provisions of sub-sections (1) and (2), co-operative society carrying on business as a primary co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, or a co-operative society which becomes a primary co-operative bank after such commencement shall, notwithstanding that it does not at any time thereafter satisfy the requirements of the definition

of primary co-operative bank (in clause (cc) of section 5), continue to be a primary co-operative bank within the meaning of this Act, and may, with the approval of the Reserve Bank and subject to such terms and conditions as the Reserve Bank may specify in that behalf, continue to carry on the business of banking."

The learned counsel for the petitioner has relied on the decision of Andhra Pradesh High Court in the case of B.Suryanarayana and others vs. No. 1453 The Kolluru Parwathi Co.Op. Bank Ltd. and others reported in AIR 1986, Andhra Pradesh, 244, wherein it has been held as under :

"Part III of the Banking Regulation Act is titled "suspension of business and winding up of Banking Companies". Section38 which deals with winding up of Banking Companies falls under part III. In other words, Co-operative Bank is excluded from being wound up under the Banking Regulation Act and if that be so it is needless to advert to the provision of section 45A of the Banking Regulation and construe with reference to non obstante clause therein, because by explicit provision under (ZB) of section 56 itself the applicability of the provisions dealing with winding up proceedings of a Co-operative Bank is excluded."

7. Second contention of the learned counsel of the petitioner Bank is that when the licence of a co-operative society is cancelled under section 22 of the Banking Regulation Act, the registration of a co-operative bank as insured bank would stand automatically cancelled, then the provisions of section 115 A(2) of the Gujarat Co-operative Societies' Act, would not be applicable and referred certain provisions of law. Under section 13-C of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 it is stated that registration of a co-operative bank as insured bank shall stand cancelled. The relevant provisions of section 13C of the Act are re-produced hereinbelow:

"13.C. Cancellation of registration of co-operative banks : The registration of a co-operative bank as an insured bank shall stand cancelled on the occurrence of any of the following event, namely :

(a) ...
(b) if it has been informed by notice in writing by the Reserve Bank that its licence shall has been cancelled under section 22 of the Banking Regulation Act, 1949, or a licence under that section cannot be granted to it; or"

(c) ...

8. Once any co-operative bank ceases to be an insured co-operative bank, the provisions of section 115(A) of the Act would not be applicable. As the provisions of sub-section (2) of section 115A of the Act would be applicable, only to an insured co-operative bank under section 13-C of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. As the provisions of section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 are applicable to a bank under section 11 of the Banking Regulation Act, if the provisions of section 115(A) of the Act are not applicable, then the Registrar would be empowered to wind up under sections 107 and 108 of the Act. Under section 107 of the Act it is provided that if the Registrar, after an inquiry has been held under section 86, or an inspection has been made under section 87, or on the report of the auditor auditing the accounts of the society or his own motion, in the case of a society which has ceased to comply with any conditions as to registration and management in this Act or the rules or the bye-laws or is of the opinion that a society ought to be wound up, he may make an interim order directing it to be wound up, he may make an interim order directing it to be wound up. Where an interim order is made on a ground specified in clause (a) or sub-clause (iv) of clause (c) of sub-section (1) a copy thereof shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrat within a month from the date of the issue of such order. The Registrar, after giving an opportunity to the society of being heard, shall make a final order, vacating or confirming the interim order. Section 108 of the Act provides that the Registrar will appoint a liquidator when an interim or final order is made under section 107 for winding up of a society. He may in accordance with rules appoint a person to be the liquidator of the society. When a final order is made confirming the interim order, the officers of the society shall hand over to the liquiator the custody and control of any property, effects and actionable claims and any books, records, and other documents pertaining to the business of the society, which for any reason are not handed over to the liquiator under sub-section (2) at the time when an interim order was made. At the relevant time, when interim order was made and effected, the winding up orders remained in force. The general body of the soceity shall not exercise any power in the event of the interim order. The whole of the assets of the society shall on the appointment of the liquidator vest in him and notwithstanding anything contained in any law for the time being in force, if any immovable property is held by him on behalf of the society, the title over the land shall be complete as soon as the mutation of the name of his office is effected, and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession. In the event of the interim order being vacated,

the liquidator shall hand over the property, effects, actionable books, records and other documents of the society to the officer who had delivered the same to him. The acts done and the proceedings taken by the liquidator shall be binding on the society, and such proceedings shall after the interim order has been vacated under section 107 be continued by the officers of the society. The Registrar is required to give an opportunity of being heard before passing an interim order and he relied on the decision of this Court in the case of Apex Co-operative Bank Ltd. vs. District Registrar and others reported in 1993(2) GLH, 861. As such, the contention of the learned counsel for the petitioner is that as soon as the licence of the petitioner society as insured bank was cancelled by the RBI, no action can be taken under section 115(A) of the Act by the Registrar. At the most, the Registrar can exercise his powers under section 107 and 108 of the Act. In the present case, the Joint Registrar, Co-operative Societies, State of Gujarat exercised the powers under section 107 of the Act to pass final orders to take the petitioner bank in liquiation under section 108 of the Act and appointed one Mr. Solanki as the liquidator of the bank on the terms and conditions mentioned in the order dated 2/3.5.2001 and that order is based on the inspection carried out by the RBI on 31.3.2000. During the inspection, the RBI found 10 irregularities. The bank's assets worth Rs. 347.68 lacs have been completely washed away. In this way, the bank's financial condition has become weak and the provisions of sections 11(1), 22(3)(a) and 22(3)(b) of the Banking Regulation Act are not followed by the RBI. On reading sr. no. 3 according to which section, under section 115(A)(ii) of the Act, they have given guidelines directing the take bank in liquidation and appointing a liquiator. Hence, the powers were exercised independently by the Joint Registrar, Co-operative Societies, Gujarat State, under section 107 of the Act and the petitioner bank was liquidated under section 108 of the Act and one Mr. Solanki was appointed as a liquidator on ten grounds and reasons given in the impugned order, even without referring the direction of the RBI given vide order dated 23.4.2001.

The contention of the learned counsel for the petitioner in this respect is that the Registrar has exercised his powers under sections 107 an 108 of the Act and for liquidation and for appointing a liquidator. Under the provisions of section 107(1) of the Act, if the Registrar has come to the conclusion that the society is to be wound up, he is required to make an interim order before passing the interim order on the grounds specified in clause (a) of clause (c) of sub-section (i), and a copy thereof is required to be given to the petitioner bank in the prescribe manner. After calling upon the society to submit its explanation to the Registrar within a month from the date of issue of such copy, the Registrar is also required to make a final order after giving an opportunity of hearing to the

society. In the present case, before passing the impugned order date 2/3.5.2001, the Registrar has not given a reasonable opportunity of hearing to the petitioner society therefore, the impugned order passed by the Joint Registrar is vitiated, illegal and in violation of principles of natural justice and without giving an opportunity of hearing to the petitioner bank. Hence, according to him, the order requires to be quashed and set aside.

10. As against this, the learned counsel for the respondent no.2 Bank contended that the RBI, vide its order dated 23.4.2001 has directed the Registrar of Co-operative Societies to make an order for winding up of the petitioner bank and appoint a liquidator to take charge in terms of clause (ii) of section 115(A) of the Act as the RBI was satisfied that in the public interest and for preventing the affairs of the petitioner bank being conducted in a manner detrimental to the interest of depositors and since the bank has failed to comply with the requirements of sections 11(1), 22(3)(a) and 22(3)(b) of the Banking Regulation Act and the petitioner bank was unable to pay its debts, as a result, the Registrar of Co-operative Societies was directed to make an order for winding up and appoint a liquidator to take charge under section 115(A)(ii) of the Act. If the RBI requires liquidation, the RBI is the sole judge to decide as to whether affairs of the banking company are being conducted prejudicial to the depositors. In this regard, he relied on the decision of the Supreme Court in the case of Joseph Kuruvilla Vellukunnel vs. Rserve Bank of India and others reported in AIR 1962, SC, 1371 wherein the the argument of the learned counsel for the petitioner in that case was considered under section 38(1) and (3)(b)(iii) to make the Reserve Bank of India the sole Judge to decide whether the affairs of a banking company are being so conducted as to be prejudicial to the interest of depositors and the Court has no option but to pass an order winding up a banking company The Supreme Court held that sections 38(1) and 3(b)(iii) of the Banking Companies Act were neither discriminatory nor unreasonable and could not be declared void under Articles 14 and 19 of the Constitution of India. If the Reserve Bank were to act malafide, the Central Government and in the last resort, the Courts will be there to intervene. It has also been observed that the most important function of the RBI is to regulate banking system. The RBI has been described as a banker's bank. The RBI has also been given certain advisory and regulatory functions. By its position as a Central Bank, it acts as an agency for collecting financial information and statistics and it advises Government and other banks on financial and banking matters and for this purpose, it keeps itself informed of the activities and monetary position of scheduled and other banks and inspects the books and accounts of scheduled banks and advises Government after inspection whether a particular bank should be included in the Second Schedule or not. Thus, the RBI has supervisory power and advises the Central

Government regarding financial position.

11. The learned counsel for the respondent no. 2 further contended that the words "if so require" mentioned in sub-section (iii) of section 115(A) of the Act are significant inasmuch as when the RBI requires it may direct the Registrar to make orders for supersession of the committee and appointment of an administrator in place thereof in public interest or preventing the affairs of the bank being conducted in a manner detrimental to the interest of depositors or for securing the management of the bank, meaning thereby the RBI is exercising its powers through Registrar. If the Registrar exercises the powers under section 81(i) of the Act with the previous sanction or requisition of the RBI under section 115(A) of the Act, it cannot be contended that the exercise of such power is illegal and without authority of law. In the present case also, the Registrar has in fact, acted on the requisition of the RBI vide letter dated 23.4.2001. Section 35(A) of the Banking Regulation Act authorises the RBI to give necessary direction to secure proper management of any banking company and that when an emergent action is required to be taken, orders passed without giving a prior opportunity of hearing to the persons adversely affected, cannot be said to be illegal. In this connection, he relied on the decision of this Courtin the case of Shree Sarvodaya Co.Op. Bank Ltd. vs. State of Gujarat and others reported in 1999(2) GLR,1414. He further contended that the licensing authority has discretion to grant or refuse the licence on the basis of the material on record. The High Court cannot sit in appeal over the judgment of the RBI unless it is shown that the decision of the RBI is based on extraneous considerations or is perverse. In this connection, he relied on the decision of this Court in the case of Shivabhai Zaverbhai Patel and another vs. RBI and others reported in AIR 1986, Gujarat page 19. It is further contended by the learned counsel for the respondent no.2 Bank that the RBI passed the direction to the Registrar under section 115(A) of the Act on 17.11.2000. The Joint Registrar appointed liquidator on 7.2.2001. The petitioner filed Special Civil Application no. 2757 of 2001 in this Court and this Court stayed the order dated 7.2.2001. On the direction of the RBI date 23.4.2001, the Registrar has passed the impugned order dated 2/3.5.2001 for winding up and appointing a liquidator. The licence was granted to the petitioner bank under section 22 of the Banking Regulation Act, while the Registration of a Co-operative Society was granted under section 13(A) of the Deposit Insurance and Credit Guarantee Corporation Act. The insured bank has been defined under section 2(i) of the said Act. Insured bank means a banking company or a Regional Rural bank or a corresponing new bank or and eligible co-operative bank for the time being registered under the provisions of this Act and includes for the purposes of sections 16, 17, 18 and 21. Sub-clause (ii) of clause 2(i) says that a co-operative bank

referred to in clause (a) or clause (b) of section 13-C, the registration whereof has been cancelled under section 13 or as the case may be, under section 13-C. Thus, for the purpose of exercise of powers under section 115(A)(ii) of the Act, the petitioner bank will be deemed to be and insured bank. Even if the licence has been cancelled an the registration stands cancelled under the provisions of law and the petitioner bank would remain as insured bank and the provisions of section 115A(ii) of the Act would be applicable.

12. The further contention of the learned counsel for the respondent bank is that even the order of cancellation of licence is not final as the appeal is pending before appellate authority. (Central Government). The powers can be exercised under section 56(CC) (i) of the Act. Thus, it is also contended by the learned counsel for the respondent Bank that the inspection was carried out by RBI and a notice was given to the petiioner bank for cancellation of licence to carry on banking business in India under section 22 of the Banking Regulation Act, 1949 on 26th April, 2001. Thus, e petitioner was given an opportunity of hearing and the order of Registrar has been passed under section 115(A)(2) of the Act on the direction given by the RBI in the larger public interest. This Court therefore, should not interfere.

13. I have carefully considered the contentions of the learned counsel for the parties. I have to see only as to whether the order of the Joint Registrar has been passed under section 115A(2) of the Gujarat Co-operative Societies Act on the direction of the respondent no. 2 RBI as to RBI is the Supreme authority of Banking system and is Bankers' Bank or the Joint Registrar has passed the order under sections 107 and 108 of the aforesaid Act independently of the direction of the RBI. It appears that the inspection was made by RBI and several irregularities were found. The notice was issued to the petitioner for cancellation of the licence and after giving an opportunity of hearing, the licence of the petitioner bank was cancelled and on the direction of the RBI under the provisions of section 115(A)(2) of the Act, the Joint Registrar has passed the impugned order. Though in the impugned order, the exercise of power has been mentioned under sections 107 and 108 of the Act, even some grounds have been given by the Joint Registrar for passing the order regarding appointment of a liquidator. But reference regarding confidential letter of RBI dated 23.4.2001 has been made in the impugned order, the copy of the letter of RBI dated 23.4.2001 is on record wherein the RBI has directed the Registrar to make an order for winding up the petitioner Bank and for appointment of liquidator in terms of section 115A(2) of the Act, in the impugned order refernce is required to read under section 115A(2) of the Act. As such, the sum and substance of the impugned order with reference to the letter of the RBI and

section 115 of the Act is that the impugned order has been passed on the direction of RBI. Even if wrong sections have been mentioned and reasons have been given in the impugned order, it would not be appropriate for this Court to hold that the order has been passed under sections 107 and 108 of the Act independently of the direction of the RBI and those powers have not been exercised for passing the impugned order under section 115(A)(2) of the Act. The RBI issued the show cause notice for cancellation of licence and after giving an opportunity of hearing to the petitioner, the RBI cancelled the licence of the petitioner after cancelling the licence of the petitioner, the RBI passed consequential order directing the Registrar for winding up and appointing liquidator for the exercise of powers under section 115A(2) of the Act, the impugned order is not in violation of principles of natural justice. It is significant to note at this stage that at the initial stage, while considering the interim relief, this Court repealed the argument of the learned counsel for the petitioner and found that issuance of a show cause notice or non-issuance of a show cause notice does not have any effect because the Registrar is bound by the order of RBI and he has to pass the order; whether he passes the order after hearing the parties or withot hearing the parties. It has also been observed that the liquidator has been already appointed by the Joint Registrar under the direction of RBI. Hence, prima facie the court was of the view that the order does not suffer from any illegality. In other words, at the initial stage, this Court was not satisfied that the order passed by the Joint Registrar under the direction of RBI was illegal and not sustainable in the eye of law. In the present case, the petitioner bank has already filed an appeal before appellate authority (Central Government) against cancellation of the licence of the petitioner bank, it would not be proper for me to record findings on the legal points raised by the learned counsel for the parties and those questions can be decided by the appellate authority. As the appeal of the petitioner Bank is still pending before the appellate authority, the petitioner would be at liberty to raise all arguments and contentions including licence granted to the petitioner co-operative society cannot be cancelled as per amending provisions (zb) or (za) and as held by the Andhra Pradesh High Court in the case stated above, the action of the RBI was malafide making orders cancelling the licence of the petitioner co-operative society and directing the Registrar to wind up the business of the petitioner Bank and appoint liquidator and/or lesser drastic order for appointment of administrator could have been made and primary function of the co-operative society cannot be curtained anyhow. T he petitioner may approach the appellate authority for its decision at the earliest as the business of the petitioner bank has been completely closed down and is likely to be washed away for ever. If such prayer is made by the petitioner, this Court hopes and trust that the appellate authority will decide the

petitioner's appeal expeditiously and at the earliest.

14. In view of the above discussion, I do not find any good reason calling for interference. Accordingly, this petition is hereby dismissed. Notice is discharged with no order as to costs. Interim relief, if any, stands vacated.

...

***darji